TEO CHIN HWA

v.

PP

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
AHMAD FAIRUZ JCA
HAIDAR MOHD NOOR JCA
[CRIMINAL APPEAL NO: J-05-67-98]
9 DECEMBER 1999

CRIMINAL PROCEDURE: *Sentence - Adequacy - Possession of dangerous drugs - Possession of 156 grammes of heroin and morphine - Sentenced to 18 years' imprisonment and 10 strokes of the rotan - Whether manifestly excessive - Dangerous Drugs Act 1952, ss. 12(2), 39A(2)*

The appellant had pleaded guilty to a charge under s. 12(2) of the Dangerous Drugs Act 1952 ('the Act') for having in his possession 156.3 grammes of heroin and morphine. Upon conviction, the High Court sentenced the appellant to 18 years' imprisonment and 10 strokes of the rotan under s. 39A(2) of the Act. The appellant considered the sentence passed as manifestly excessive and appealed to the Court of Appeal.

Held:
Per Haidar Mohd Noor JCA

[1] The punishment under s. 39A(2) of the Act is imprisonment for life or for a term which shall not be less than 5 years and shall also be liable to whipping of not less than 10 strokes. The imposition of 10 strokes is the minimum prescribed by the Act. In the circumstances this court would only deal with whether the 18 years' imprisonment imposed was manifestly excessive.

[2] Under s. 3 of the Criminal Justice Act 1953, life imprisonment means 20 years. Therefore, in respect of the charge in which the appellant was convicted, the maximum sentence allowed under the Act would be 20 years' imprisonment.

[3] The learned judge had followed the correct principles in the assessment of the sentence. Dangerous drugs offences especially involving hard drugs like heroin and morphine must be viewed seriously and with the utmost contempt by the courts. The learned judge had committed no

error in the exercise of his discretion on the sentence imposed on the appellant, and consequently there were no grounds for this court to interfere with it.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu telah mengaku salah terhadap tuduhan di bawah s. 12(2) Akta Dadah Berbahaya 1952 ('Akta') kerana memiliki 156.3 gram heroin dan morphin. Berikut sabitannya, Mahkamah Tinggi menjatuhkan hukuman 18 tahun penjara dan 10 kali sebatan di bawah s. 39A(2) Akta. Perayu merasakan hukuman yang dijatuhkan terlampau berat dan dengan itu merayu ke Mahkamah Rayuan.

Diputuskan:
Oleh Haidar Mohd Noor HMR

[1] Hukuman di bawah s. 39A(2) Akta adalah pemenjaraan seumur hidup atau untuk jangka yang tidak kurang dari 5 tahun dan hendaklah juga dikenakan sebatan sebanyak tidak kurang dari 10 sebatan. Pengenaan 10 kali sebatan adalah jumlah minima mengikut ketetapan Akta. Dengan itu mahkamah ini akan hanya menimbang samada hukuman 18 tahun penjara adalah terlampau berat.

[2] Di bawah s. 3 Akta Keadilan Jenayah 1953, seumur hidup bermaksud 20 tahun. Oleh itu, berhubung tuduhan yang mana perayu disabitkan, hukuman maksima yang dibenarkan di bawah Akta ialah 20 tahun penjara.

[3] Hakim bijaksana mengikuti prinsip yang betul dalam menilai hukuman. Kesalahan dadah berbahaya yang melibatkan dadah berat seperti heroin dan morphin harus dipandang dengan serius dan jijik oleh mahkamah. Hakim bijaksana tidak melakukan apa-apa khilaf dalam budibicaranya apabila melaksanakan hukuman terhadap perayu, dan tiada alasan bagi mahkamah ini mengganggu keputusannya itu.

[Rayuan ditolak.]

Case(s) referred to:
Bhandulananda Jayatilake v. PP [1982] 1 MLJ 83 ***(refd)***
PP v. Loo Choon Fatt [1976] 2 MLJ 256 ***(refd)***
PP v. Yeoh Eng Khuan [1976] 1 MLJ 239 ***(refd)***

Legislation referred to:
Criminal Justice Act 1953, s. 3
Dangerous Drugs Act 1952, ss. 12(2), 39A(2), 39B(1)(a)

For the appellant - Teh Poh Teik; M/s Teh Poh Teik & Co
For the Public Prosecutor - A Rashid Daud DPP

[Appeal from High Court, Johor Bahru; Criminal Trial No: 45-21 of 1997]

Reported by WA Sharif

JUDGMENT

Haidar Mohd Noor JCA:

The appellant pleaded guilty on the amended charge under s. 12(2) of the Dangerous Drugs Act 1952 ("the Act") and sentenced to 18 years' imprisonment and ten strokes under s. 39A(2) of the Act by the High Court. The sentence of imprisonment was ordered to run from the date of his arrest, that is, 3 May 1997.

He appealed against the sentence only to this court. We heard his appeal on 20 April 1999. We dismissed his appeal and affirmed the sentence imposed by the High Court.

The appellant was originally charged for trafficking in 156.3 grammes mixture of heroin and monoacetylmorphine (26.3 grammes Heroin and 130 grammes Monoacetylmorphine) under s. 39B(1)(a) of the Act. At the end of the case for the prosecution, the learned judge amended the charge to s. 12(2) and punishable under s. 39A(2) of the Act wherein he pleaded guilty to the amended charge and was accordingly convicted and sentenced as stated above.

The punishment under s. 39A(2) of the Act is imprisonment for life or for a term which shall not be less than five years and shall also be liable to whipping of not less than ten strokes. The imposition of ten strokes is the minimum prescribed by the Act and that was the sentence meted out by the High Court. In the circumstances we shall only deal with whether the 18 years' imprisonment imposed by the High Court was manifestly excessive that would warrant us to interfere with it.

Under s. 3 of the Criminal Justice Act 1953, life imprisonment means 20 years. Therefore, in respect of the charge in which the appellant was convicted, the maximum sentence allowed under the Act would be 20 years' imprisonment.

In our view, it is beyond any question that what sort of sentence is to be imposed is within the court's discretion. In order for the appellant to persuade us to interfere with the sentence imposed he must show to us, sitting as the appellate court, that the learned judge clearly had erred in applying the correct principles in the assessment of the sentence (*Public Prosecutor v. Loo Choon Fatt* [1976] 2 MLJ 256).

After considering the mitigation put forward to the learned judge, this is what he said in his judgment in imposing the sentence (p. 110 of the appeal record):

> In *Bahruni bin Ismail v. Public Prosecutor* [1997] 2 MLJ 265 the Federal Court, in allowing an appeal against conviction on a charge of drug trafficking and substituting therefor a conviction under section 12(2) and punishable under section 39A(2) of the Act where the amount of dangerous drug involved was 24.88 grammes of heroin, sentenced the appellant to imprisonment for a term of 15 years and 10 strokes of whipping. In *Muhammed Hassan v. Public Prosecutor* the Federal Court, in allowing an appeal against conviction on a charge of drug trafficking and substituting therefor a conviction under section 6 of the Act where the amount of dangerous drug involved was 1,784.8 grammes of cannabis, sentenced the appellant to imprisonment for a term of 16 years with effect from the date of his arrest and 10 strokes of whipping. In the instant case, the amount of dangerous drug involved was a mixture of 26.3 grammes of heroin and 130 grammes of monoacetylmorphine, which amount totalled 156.3 grammes, an amount 31 times the minimum weight of 5 grammes as provided under section 39A(2)(c) of the Act. Learned counsel for the accused had drawn my attention to the case of *Mohamed Abdullah Ang Swee Kang v. Public Prosecutor* [1988] 1 MLJ 167 and submitted that a plea of guilty is in itself a mitigating factor and that it is generally accepted that the extent of reduction on account of plea of guilty would be between one-quarter and one-third of what would otherwise would have been the sentence. I am however of the view that no sentence can be assessed by a simple mathematical formula. To me, any offence under the Act is a serious offence and I would be failing in my duty if I do not pass sentences which make it absolutely plain that those who indulge in such activities do receive sentences of utmost severity. In the instanct case, the amount of dangerous drug involved is 26.3 grammes of heroin and 130 grammes of monoacetylmorphines and to me, a sentence to imprisonment for a term of 18 years is merited upon the facts of the case.

The learned judge had followed the correct principles in the assessment of the sentence. Even if the sentence imposed may appear to be excessive but it must be shown to be **manifestly** excessive and that there was a failure on the part of the learned judge to apply the right principles for this court to intervene. Dangerous drugs offences especially involving hard

drugs like heroin and morphine must be viewed seriously and with the utmost contempt by the courts. It is a serious social problem in this country and the plea of guilty in the present case is outweighed in favour of the public interest. It has to be noted that the legislature had thought it fit to increase the punishment for offences under s. 39A(2) of the Act from a maximum of 14 years' imprisonment to life imprisonment and the minimum term of imprisonment from three years to five years and the minimum strokes increased from six to ten strokes. The legislative exercise therefore denotes the government's concern of the problem of drug abuse in this country "the degenerating effect of the misuse of dangerous drugs and the attendant dangers it has posed to society itself" per Hashim Yeop Sani, J (as he then was) in *Public Prosecutor v. Lao Choon Fatt, supra*. Unless the courts take a firm stand in such offences the whole purpose of the legislature in increasing the punishment under s. 39A(2) of the Act would be lost (*Public Prosecutor v. Yeoh Eng Khuan* [1976] 1 MLJ 239).

In considering an appeal on sentence, the Federal Court in *Bhandulananda Jayatilake v. Public Prosecutor* [1982] 1 MLJ 83 stated at p. 84:

> ... this court has said it again and again that it will not normally interfere with sentences, and the possibility even the probability, that another court would have imposed a different sentence is not sufficient, *per se*, to warrant this court's interference.
>
> For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorised or extraneous or irrelevant exercise of discretion.

We were satisfied that the learned judge committed no error in the exercise of his discretion on the sentence imposed on the appellant and hence there were no grounds for us to interfere with it.

The appeal was dismissed and the sentence affirmed by us.